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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 -----x

4 UNITED STATES OF AMERICA,

5 v.

13 CR 811 (ALC)

6 ALVARADO DOMINGUEZ,

7 Defendant.
-----x

8 New York, N.Y.
9 May 4, 2015
10 11:00 a.m.

12 Before:

13 HON. ANDREW L. CARTER, JR.,

14 District Judge

15 APPEARANCES

16 PREET BHARARA
17 United States Attorney for the
18 Southern District of New York
19 SEAN BUCKLEY
20 Assistant United States Attorney

21 AVROM ROBIN
22 Attorney for Defendant

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1 (In open court, case called)

2 MR. BUCKLEY: Good morning, your Honor, Sean Buckley
3 for the government.

4 MR. AVROM: Avrom Robin for Alvarado Dominguez, seated
5 with me at the defense table, and I note we have about 15
6 family and friends here, including ten adults, mother, sister,
7 brother, nephew, niece, cousins and friends in support of
8 Mr. Dominguez. Thank you.

9 THE COURT: Good morning.

10 Good morning, Mr. Dominguez.

11 THE DEFENDANT: Good morning.

12 THE COURT: Are the parties prepared to go forward
13 with sentencing today?

14 MR. BUCKLEY: Yes, your Honor.

15 THE COURT: In preparation of today's sentencing I
16 received a submission from defense counsel with many letters
17 and certificates attached, a submission from the government.
18 And just today I received an additional cover letter from
19 defense counsel attaching letters from the mother of
20 Mr. Dominguez' biological daughters as well a letter from his
21 biological daughters.

22 Is there anything else that I should have, counsel for
23 the government?

24 MR. BUCKLEY: Not from the government, thank you, your
25 Honor.

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1 THE COURT: Obviously I received and reviewed the
2 presentence report. Is there anything else I should have from
3 the defense?

4 MR. AVROM: No, Judge.

5 THE COURT: Defense counsel, have you reviewed the
6 presentence report and discussed it with your client?

7 MR. AVROM: Yes, I have, your Honor.

8 THE COURT: Mr. Dominguez, have you had a chance to
9 review the presentence report with your attorney and discussed
10 anything that you might object to with him.

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Counsel for the government, have you
13 reviewed the presentence report?

14 MR. BUCKLEY: Yes, your Honor.

15 THE COURT: So the defense, I believe, is objecting to
16 the criminal history category, which obviously affects the
17 sentencing guideline range. Any there are other objections to
18 the presentences report by the defense?

19 MR. AVROM: No, Judge.

20 THE COURT: Are there any objections to the
21 presentence report by the government?

22 MR. BUCKLEY: There are not, your Honor.

23 THE COURT: Let me hear from the defense specifically
24 regarding their objection to Mr. Dominguez's criminal history
25 category.

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1 MR. AVROM: Thank you, Judge.

2 THE COURT: Before you do that, so the record is
3 complete, I accept Mr. Dominguez' guilty plea. He pled guilty
4 before the magistrate judge. I reviewed the transcript and I
5 accept the magistrate judge's recommendation that I accept
6 Mr. Dominguez's guilty plea.

7 Go ahead, counsel.

8 MR. AVROM: Thank you.

9 As your Honor noted, my objection, which really falls
10 under 3553(a), which is how the offense listed in paragraph 61
11 should be counted or weighed in the criminal history category
12 determination.

13 This 2004 youthful offender conviction at age 17 was
14 originally a Class A misdemeanor, and but for Mr. Dominguez'
15 violation of probation, it wouldn't get any points. But
16 because he violated probation, he was sentenced to a year, it
17 gets two points. And that's a correct calculation under the
18 guidelines. My point is the way those two points affect the
19 total picture here. And again, this conviction is ten years
20 old.

21 This ten-year old misdemeanor conviction increases his
22 guidelines because it jumps in from category three, criminal
23 history category three to criminal history category four, those
24 two points. So this ten-year old conviction raises his
25 guideline range from 57 to 71 months, the stipulated range in

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1 the plea agreement, to 70 to 87 months, the range in criminal
2 history category four.

3 My argument is that if you give this offense less
4 weight, I'm not saying no weight, the guidelines give it two
5 points. If you give it one point, he would still be in
6 criminal history category three, and he would still be within
7 the stipulated range of the plea agreement.

8 So I think that putting him in criminal history
9 category four because of this offense, criminal history
10 category four includes people with three felony convictions,
11 and I think that clearly overstates the seriousness of
12 Mr. Dominguez' criminal history and gives this youthful
13 offender and violation of probation conviction an unfairly
14 heavy weight.

15 The guidelines, as your Honor knows, address the issue
16 of a determined criminal history overrepresenting the
17 seriousness of the defendant's criminal history. That's at
18 4A1.3(b)(1).

19 THE COURT: So just to be clear, it sounds like -- I
20 don't want to put words in your mouth, but it sounds like
21 you're not objecting to the notion that this youthful offender
22 adjudication/conviction counts under the guidelines, and that
23 the guideline calculations set forth in the presentence
24 report -- you're not objecting to the guideline calculation as
25 set forth in the presentence report and you're not objecting to

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1 that conviction being included in his criminal history
2 category, but instead you are asking me to either vary from the
3 guidelines under 3553(a) or perhaps to downwardly depart
4 horizontally from the guidelines under guideline 4A1.3. Is
5 that what you're saying?

6 MR. AVROM: I'm asking for the first, a variance under
7 3553(a), because I am precluded by the plea agreement from
8 asking for a downward departure.

9 THE COURT: Just to be clear, the guidelines are no
10 longer mandatory. I'm not required to adhere to the sentencing
11 guidelines, but we are still required to determine the
12 guideline range that applies. So that's what I was trying to
13 get to in terms of any objection.

14 Let me ask, is there any objection to the guideline
15 calculation as set forth in the presentence report? I
16 understand you want me to vary from that guideline
17 determination, but is there any objection to the inclusion of
18 this offense in the criminal history category, and is there any
19 objection to the guideline determination, the guideline
20 calculation set forth in the presentence report?

21 MR. AVROM: No, Judge.

22 THE COURT: Counsel for the government?

23 MR. BUCKLEY: We believe it's properly included, your
24 Honor.

25 THE COURT: All right. So based on the lack of any

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1 objection, based on my own independent evaluation of the
2 guidelines, I accept the guideline calculation as set forth in
3 the presentence report, which takes us to a total offense level
4 of 23, criminal history category four, and a guideline
5 imprisonment range of 70 to 87 months.

6 I will hear the parties regarding anything they wish
7 to say regarding the appropriate sentence, starting with
8 defense counsel.

9 MR. AVROM: Thank you, Judge.

10 So the criminal history -- my 3553(a) argument is that
11 the criminal history of four overstates the seriousness. And I
12 think I have already laid out my objections to the youthful
13 offender conviction in paragraph 61 so that your Honor
14 understands them. But I think the most effective point is
15 that, again, I'm not asking you to discount it, I'm asking you
16 to count it as one point and not two. And by doing so,
17 Mr. Dominguez would then still remain in criminal history
18 category three, because he would have a total of six points,
19 not seven, if you count it as two.

20 Am I being clear about that, Judge?

21 THE COURT: I believe so, yes. My question then is
22 what about the fact that from the presentence report it appears
23 that on the date that he pled guilty and received the youthful
24 offender adjudication there was another case that was dismissed
25 as a result of that. Paragraph 68 details another arrest, a

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1 subsequent arrest to August 26, 2003 arrest for the attempted
2 grand larceny, paragraph 68, the arrest on December 2nd of
3 criminal sale of marijuana in the fourth degree, and it looks
4 like that was dismissed due to the conviction on that other
5 case.

6 What can you tell me about how I should consider that
7 in terms of how to count that? You're saying I should count
8 that as one point instead of two points. What about the fact
9 there was another arrest that was dismissed as a result of him
10 getting his break in 2004?

11 MR. AVROM: Could I have a moment, Judge?

12 THE COURT: Sure.

13 (Pause)

14 MR. AVROM: Your Honor, Mr. Dominguez tells me this is
15 for one \$10 bag of marijuana, and that sale is consistent with
16 his history, which was set out in the PSR, as a drug abuser.
17 So I'm asking you not to count that. I think that is so small
18 and so old that it should not be part of your analysis.

19 THE COURT: That marijuana sale is not counting under
20 the guidelines. I'm saying it seems to militate against what
21 you're saying, that the other conviction that is counted under
22 the guidelines is so old and so -- I gather from what you say
23 is that it so old, he was so young, it was a misdemeanor, it
24 wasn't a big deal. But it seems like at the time that he pled
25 to that misdemeanor that wasn't a big deal there was another

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1 misdemeanor that you're also telling me that wasn't a big deal
2 that is not counted under the guidelines. And it seems to me
3 that kind of cuts against your argument that I should count
4 this as -- that I should cut this one in half.

5 MR. AVROM: Well, I don't think it cuts against that
6 argument because I'm submitting that it's such a small offense,
7 another day and time it might have been written up as a simple
8 possession. It's one bag, \$10 bag, so I don't think it really
9 cuts against my argument.

10 THE COURT: What do you mean by that, another day and
11 time? According to the presentence report, it was a sale of a
12 bag to an undercover officer. I don't know at what time that
13 would have counted as simple possession.

14 MR. AVROM: I think the way these things plead out
15 depend on the circumstances in the criminal court at the given
16 time. I'm not disputing that it was a sale to an undercover
17 police officer, I'm just -- my point is that the amount
18 involved is so small.

19 THE COURT: But it seems that you want me to infer
20 from that that that's the only bag that he sold that day, was
21 selling at that time, that he was the unluckiest marijuana
22 seller in 2003 on December 2nd, and the first bag that he sold
23 of \$10 that he got caught right then and there.

24 MR. AVROM: I don't think I'm suggesting that, Judge.

25 THE COURT: All right. Let me hear you on the rest of

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1 your arguments.

2 MR. AVROM: I would also like to address paragraph 62,
3 which is a conviction for knowingly introducing dangerous
4 contraband into a prison, and this gets two points. And I'm
5 not disputing anything about this, but I want to supply some
6 additional explanation to your Honor about this offense.

7 Mr. Dominguez was working at the time in construction
8 with his uncle, who is in the audience, and this work is also
9 referred to in the PSR as something he did from time to time
10 off the books. And the box cutter which contained the blade
11 was in his pocket because they were doing drywall and other
12 kinds of work that day.

13 Mr. Dominguez at that point in time had been a visitor
14 to the jail any number of times and knew full well you couldn't
15 bring in a box cutter or a blade, and not only that, so he --
16 it was in his pocket by accident, he forgot to take it out, and
17 was going to or coming from work. It wasn't an intentional
18 attempt to introduce a blade into a prison.

19 And as Mr. Dominguez points out to me, and I think
20 your Honor knows this, there are already blades in the prison,
21 there are safety razor blades made into knives, other objects
22 which are fashioned into weapons. So on two counts, that he
23 had already been to the jail a number of times and knew he
24 would be searched, and two, that there was no reason to
25 introduce a blade into a prison because there are blades

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1 already there, as a way of explaining that conviction.

2 THE COURT: What can you tell me, if you know, about
3 the requirements of his probation when he was a youthful
4 offender? I know his youthful offender probation was revoked,
5 and it seems it was revoked approximately four months after he
6 got arrested on this incident you're talking about now, but
7 there was a condition of his youthful offender probation that
8 he not associate with known felons, and he knew the person he
9 was visiting with was a felon. What can you tell me about
10 that?

11 MR. AVROM: Mr. Dominguez doesn't recall if there was
12 such a prohibition in his probation convictions, and I haven't
13 seen them, so I don't know.

14 I'll move on to my argument under 3553(a). Another
15 issue I want to touch on here is duration and relative
16 culpability. According to the PSR, Mr. Dominguez was involved
17 for a period of three months here. According to the government
18 information and conversations I had with them, he was involved
19 for four months. That's in a charged conspiracy in the
20 indictment of a three-year period.

21 In terms of number of offenses, the PSR lists four.
22 The government detailed for me seven that they felt they could
23 prove at trial that he was involved in. And that's, again,
24 against an offense conduct of over a hundred burglaries. So
25 I'm asking your Honor to consider that Mr. Dominguez is at a

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1 lower level of culpability than many of his -- or at least some
2 of his defendants -- co-defendants in this case.

3 Moving on to some personal factors --

4 THE COURT: Hold on just for a moment, please.

5 Go ahead, please.

6 MR. AVROM: Moving on to last prong of my argument,
7 Judge, the personal issues. Mr. Dominguez is 29 years old now.
8 He's been in for 18 months. His disciplinary record at MDC has
9 been clear that whole time with the exemption of one minor
10 incident on the very first day he was arrested for making an
11 improper telephone call at a point in time when he wasn't aware
12 of the rules.

13 The presentence report recommends that he be sent to a
14 residential drug abuse treatment program consistent with his
15 substance abuse issues, which according to the PSR, and of
16 course, I agree, likely contributed to his involvement in this
17 offense and explains the circumstances set out in the
18 government's letter of yesterday. The government goes at some
19 length, in fact, in their letter to detail evidence that he was
20 dealing marijuana from his apartment. And I'm not trying to
21 minimize that conduct, but I'm saying that it's consistent with
22 his drug abuse history and his need for treatment.

23 The presentence report also says that Mr. Dominguez
24 has the potential to become a productive member of society.
25 And your Honor sees here he's got a lot of family support, and

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1 that's always an argument against the likelihood to reoffend.
2 Statistically, people with strong support systems reoffend less
3 frequently. He'll be in his mid-thirties by the time he's
4 released in any event, whatever -- I think wherever you go in
5 the range or whichever range you go in. He's going to have a
6 long time, Judge, to think about the consequences of his
7 criminal acts here and a long period of sobriety in custody to
8 clear his head and focus on getting back on track. And
9 certainly he's aware that if there is a next time, he will be
10 facing a much longer sentence.

11 So I'm asking you, Judge, to show some leniency and
12 sentence him at the lowest sentence sufficient but not greater
13 than necessary.

14 As I said, I'm requesting a recommendation for the
15 residential drug abuse treatment program, and also for
16 designation to Danbury in Connecticut or Fort Dix in New
17 Jersey. His mother, who is here today, lives in Connecticut.
18 So that would facilitate visits, which are also instrumental in
19 not reoffending.

20 THE COURT: Let me hear from counsel for the
21 government.

22 MR. BUCKLEY: Yes, your Honor. I'm going to start by
23 just addressing a few of the points that Mr. Robin made in his
24 oral presentation. The first I want to touch upon is the
25 argument that the Court should take into consideration -- take

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1 into account his role vis-a-vis the roles played by his fellow
2 co-conspirators here. And the crux of Mr. Robin's argument on
3 that point really centered upon the number of burglaries that
4 he participated in, as compared to the larger conspiracy, seven
5 of the 100 burglaries.

6 Respectfully, your Honor, the guidelines already
7 account for that role. In paragraph 22 he was held accountable
8 only for the drug weights that related to the robberies in
9 which he participated or otherwise was directly tied. So to
10 the extent that the question is whether there should be a
11 variance for role, the government submits that a variance is
12 not appropriate here, because his guidelines calculation, which
13 differs from that of his co-conspirators. Other
14 co-conspirators were held responsible for much greater weights,
15 and other co-conspirators were held responsible for much
16 lighter weights. So respectfully, we believe that the
17 guidelines calculation adequately accounts for his role.
18 There's no claim here that he was a leader, and there certainly
19 is no claim here that he was a minor participant.

20 The next point that I want to address, Judge, is the
21 clarifying facts that Mr. Robin has presented with regard to
22 the criminal conviction in paragraph 62. Respectfully, Judge,
23 the defendant pled guilty to a crime. He pled guilty to
24 knowingly introducing dangerous contraband to a facility. The
25 explanation that has been provided here today at sentencing is

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1 at odds with his guilty plea. This crime has, as element, that
2 the defendant knowingly introduced that contraband. His
3 explanation that it was an oversight or a mistake is an
4 absolute defense to the crime to which he pled guilty. The
5 model jury instructions from the New York State courts for this
6 particular crime state that a person knowingly introduces
7 dangerous contraband into a detention facility when that person
8 is aware that he or she is doing so.

9 So the government believes the Court should reject
10 this post hoc effort by the defense to try to justify or
11 explain away a criminal conviction. He pleaded guilty to it,
12 he was convicted of it, and the facts as set forth in the
13 presentence report should be considered by your Honor.

14 The next point I want to address is the argument that
15 the criminal history category somehow overstates the
16 seriousness of his offense here. That's simply not true, your
17 Honor. It is true that the initial conviction here goes back
18 to July of 2004, that the defendant was 17 years old when he
19 was arrested for that crime, and that is indeed ten years prior
20 to the defendant's current conviction.

21 But the reason it doesn't overstate the seriousness of
22 the offense, your Honor, is in the course of ten years the
23 defendant has been convicted of three separate crimes prior to
24 the instance crime. So this crime makes it the fourth criminal
25 conviction in the span of ten years.

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1 When you consider that, this isn't aberrant behavior.
2 This isn't an instance where it's a conviction of 20 years ago
3 and the defendant maintained a clean slate throughout. Indeed,
4 the defendant didn't even comply with the terms of his
5 probation that he received for that conviction. So in addition
6 to the four criminal convictions that he now sustained, he also
7 has a probation revocation. And as your Honor noted before, he
8 received consideration on another arrest in exchange for that
9 plea.

10 So respectfully, your Honor, the defendant's criminal
11 history here I think anything but overstates the seriousness of
12 the offense. When you look at the defendant's criminal
13 history, you can see a pattern developing, Judge, and it's a
14 pattern of increasing severity in the nature and extent of his
15 crimes, and it's also a pattern that demonstrate that lenient
16 sentences simply do not have the ability to deter this
17 defendant from engaging in further criminal conduct.

18 He received a lenient sentence of three years
19 probation, he couldn't even comply with that. He received a
20 lenient sentence of one to three years imprisonment for his
21 role as to manager in a conspiracy to commit burglaries in
22 2007, and that didn't prevent him from doing this. He was
23 paroled at the bottom end of that one- to three-year sentence
24 and yet he still turned around and engaged in this conduct.

25 And lastly, your Honor, and this is set forth in the

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1 government's sentencing submission, but all of those factors,
2 all of which support a guidelines sentence here, a sentence
3 within 78 to 87 months, are further underscored by what was
4 recovered from the defendant's residence. There was evidence
5 that he was continuing to engage in drug dealing, the
6 conviction for which -- or the arrest for which he received a
7 pass previously. He is still dealing marijuana while he's
8 committing these burglaries.

9 As Mr. Masimore detailed in his sentencing submission,
10 your Honor, he's dealing marijuana out of an apartment that he
11 shares with an eight-year-old child. But on top of that, there
12 is also evidence to support that he is engaging in other types
13 of burglaries. There was the recovery of the fake NYPD
14 detective shield, a shield -- as noted in the search warrant
15 and as noted in the sentencing submission -- that was so
16 realistic that the detective who recovered it had to run the
17 number on the shield to determine that it was fake.

18 So when you take the defendant's criminal history,
19 when you take the fact that this defendant is engaging and
20 continuing to engage in serious crimes, indeed, in crimes of
21 increasing severity, and when you take the other factors about
22 this defendant's personal history, about his characteristics,
23 all of these factors, your Honor, support a guidelines sentence
24 in this case. Such a sentence is sufficient but not greater
25 than necessary to deter this defendant whose presentence

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1 investigation report demonstrates that there is a need for
2 specific deterrence as to this defendant. It's necessary for
3 purposes of general deterrence so that other people out there
4 who have similar criminal history categories, who have similar
5 pasts to the defendants, will see that courts will not
6 entertain this type of behavior. It's necessary for just
7 punishment here, and it's consistent with the defendant's
8 personal history and characteristics.

9 So for all those reasons, your Honor, the government
10 respectfully requests that the Court impose a guidelines
11 sentence as recommended by the probation office.

12 THE COURT: Let me find out from the government, can
13 you tell me a little more about specifically Mr. Dominguez'
14 role in these burglaries? He was present for these four
15 burglaries, but what was his role specifically?

16 MR. BUCKLEY: Your Honor, unfortunately I don't have
17 the details of what he specifically did at the burglary,
18 whether he was someone responsible for sweeping prescription
19 drugs off of shelves or not.

20 But what I can say and what I confirmed with AUSA
21 Masimore is he certainly was not a leader. There's no claim
22 that he's like the Araujo brothers here, there's no claim that
23 he was the mastermind behind this. But AUSA Masimore confirmed
24 that he was a part of these robbery crews. Of the ones in
25 which he personally participated, that he performed a function

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1 that was comparable to that of his co-conspirators, such that
2 he is not like -- I think it was Albert Garcia and Miguel
3 Araujo who were minor participants. Miguel Araujo was a look
4 out, for example. He was not that. He was a direct
5 participant in the burglaries in which he performed.

6 THE COURT: Mr. Dominguez, I will give you an
7 opportunity to address me if you would like. You don't have to
8 say anything, but if you would like, I will give you an
9 opportunity to address me.

10 THE DEFENDANT: Good morning, your Honor. During my
11 time incarcerated, I have continuously reflected on the damage
12 I have done to my community and the pain and suffering I have
13 caused my family and friends, the ones that I love most.

14 The hardest part is not being able to go back and
15 change what I have done. I have used this time to find myself,
16 which I had not known along the way. My faith and belief in
17 God is what has helped me through this time, as well as the
18 support of my family and friends. I will not make excuses for
19 what I have done. I don't blame anyone for my actions except
20 for myself. It was a dark time of my life. I had headed down
21 the wrong path, and unfortunately it took me being arrested to
22 notice that.

23 I want to apologize to my mother. Words can't express
24 how remorseful and shamed I am of my actions. It caused my
25 mother to lose our apartment, caused her a lot of pain and

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1 suffering, and because of my actions she doesn't have a place
2 to call home. I never want to see my mother shed a tear. I
3 can't hurt my loved ones anymore. I can change my life around,
4 and I will. Therefore, I make a promise to my mother, to God,
5 as well as myself, to never go back to that life. I owe it to
6 my daughters to be a good influence on their lives. I want to
7 be there in ways I was never able to receive as a kid due to
8 the fact my father passed away when I was a young kid. I can
9 only do that by staying away from criminal activities and
10 staying positive. I cannot change my past, but I promise you,
11 your Honor, I can and I will change my future and grow from
12 this experience never to wander down that dark path again. I
13 have found who I am, and most importantly, who I want to
14 become.

15 Working and setting a good example for my daughters,
16 nieces and nephews is my top priority. Upon my release, my
17 brother awaits me with a job. That's the first step in
18 becoming a new me, sticking to my promise and not returning to
19 a negative lifestyle. I want to repay society by giving back
20 and being a positive role model to my daughters, nieces and
21 nephews. I owe it to my community, myself, and most important,
22 to my family and friends. Unfortunately, it has taken this
23 experience to help shine a light on my once dark world.

24 Thank you for your time, as well as your patience and
25 consideration in this matter.

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1 THE COURT: Thank you. Answer me something,
2 Mr. Dominguez, tell me more about this job with your brother.

3 THE DEFENDANT: He's working for the owner of a
4 building, and he's working as a doorman. My uncle is helping
5 repair the apartments, and I will be engaging in that.

6 THE COURT: Which part of that?

7 THE DEFENDANT: Repairing apartments, and when people
8 move out we fix the walls and the floors.

9 THE COURT: And I note from the presentence report you
10 were involved in some construction prior to the accident that
11 you had. I would like to get some information. I note that
12 from the presentence report it says you have been unemployed
13 since that accident, but what is your physical condition? Are
14 you able to do that type of work?

15 THE DEFENDANT: Yeah. What I'm not able to do is run
16 because my right leg is metal. I have a metal plate and metal
17 screws. I can't run, but in terms of my hands and stuff, yes.

18 THE COURT: Is there any other reason why since 2008
19 you have been unemployed? What was going on? If you were able
20 to do this since then, why not do that work then?

21 THE DEFENDANT: When I was released from my last time
22 I was incarcerated I was doing that until I got into the
23 accident. That lasted about a year. I was in a wheelchair.
24 Then with time I got the walker, then I got crutches.

25 THE COURT: But after that, 2009 or so, 2010, is it

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1 fair to say at that time, certainly at the time you were
2 engaged in this conduct in 2007, it's fair to say you weren't
3 using a wheelchair or walker then, right?

4 THE DEFENDANT: No, your Honor.

5 THE COURT: So just tell me, because it does seem from
6 the letters that I received from your family and everything
7 else that you have the potential to be a contributing member to
8 this society, and it seems you have a lot of family support,
9 and I am just curious as to why you have not used the
10 connections that you had then and worked an honest living back
11 then?

12 THE DEFENDANT: Well, your Honor, truthfully I don't
13 have an answer to that, just that the drugs took over me, you
14 know, so I wasn't just thinking right.

15 THE COURT: I will give defense counsel if you want
16 one family member if you want to have address the Court, I will
17 give you an opportunity to do that if you like. It's not
18 necessary, but if you would like I will give you that
19 opportunity.

20 MR. AVROM: Thank you, your Honor, for that
21 opportunity, but I really did not prepare for that. I will
22 keep it in mind for next time. Most judges aren't receptive to
23 that.

24 Unless someone would like to address the judge,
25 anyone?

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1 Your Honor, they're not prepared to speak, and I think
2 they're all, understandably, intimidated by the setting.

3 THE COURT: I understand. Let me say to the family
4 and friends out there I want to thank you for the letters that
5 you submitted. I take them very seriously. I read all those
6 letters. I would like to thank you for being here today and
7 showing your continued support for Mr. Dominguez. I see from
8 the letters and everything else that he is someone who is
9 capable of turning his life around, but at some point it's up
10 to him. There's only so much that you can do to continue to
11 support him, and he certainly needs your support while he
12 remains in custody, and certainly will need your support when
13 he is released. But I want to thank you because these
14 decisions are very difficult, and I want to thank you for the
15 letters that you submitted to give me clearer sense of who he
16 is.

17 So Mr. Dominguez, tell me a little more about your
18 plans for when you get out. Where are you planning on living?
19 What else are you planning on doing? Tell me more about what
20 your plans are, because I have no doubt that -- I'm sure the
21 earlier times that you were arrested I'm sure that you weren't
22 planning on getting arrested again, I'm sure that you weren't
23 thinking that you were going to get involved in any other kind
24 of criminal conduct. And what happens sometimes is that
25 there's not a plan in place, and if you're not occupied doing

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1 something positive, it's easy to kind of fall into trouble or
2 have trouble find you. So I'm really curious in finding out,
3 what exactly is your plan for when you get out?

4 THE DEFENDANT: Well, to start off, I'm changing
5 location. I'm going to live with my sister in Connecticut so I
6 could stay away from my past. And just stay focused in working
7 with my uncle in construction. I have been doing it for quite
8 some time, and that's something that I find that I like to do.

9 THE COURT: Thank you. Is there anything else from
10 the government?

11 MR. BUCKLEY: No, your Honor.

12 THE COURT: Anything else from the defense counsel?

13 MR. AVROM: No, your Honor.

14 THE COURT: I'll be back. Let me think about this for
15 a moment.

16 (Recess taken)

17 THE COURT: I had a few more questions for
18 Mr. Dominguez. It's indicated in the report that you got some
19 substance abuse problems, and your attorney made reference to
20 that as well and asked in his sentencing submission that I
21 recommend the RDAP program at the Bureau of Prisons. I want to
22 know if you have a plan for dealing with that as well, because
23 it seems, according to the report, at the time you were
24 arrested you were abusing alcohol, marijuana, and Percocet.
25 And I'm also kind of curious if you're still -- you were still

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1 going to be needing Percocet or some kind of pain relief as a
2 result of accident and how you would make it to that. Can you
3 tell me about that?

4 THE DEFENDANT: At MDC I have been seeing my doctors
5 over there that have given me another medication that is not
6 addictive and it has the same effect.

7 THE COURT: Do you remember the name of that
8 medication.

9 THE DEFENDANT: (Shaking head)

10 THE COURT: How will you deal with the marijuana and
11 the alcohol?

12 THE DEFENDANT: Once I get out I will look for the AA
13 meetings and I could check into a drug program, as I said to
14 the PSR.

15 THE COURT: Did you receive drug treatment earlier,
16 like in connection with your earlier arrests, was there any
17 drug treatment or anything?

18 THE DEFENDANT: No.

19 THE COURT: Anything else from the government?

20 MR. BUCKLEY: No, your Honor.

21 THE COURT: Anything else from the defense?

22 MR. AVROM: No, Judge.

23 THE COURT: Is there any reason that sentence should
24 not be imposed, counsel from the government?

25 MR. BUCKLEY: Not from the government's perspective,

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1 Judge.

2 THE COURT: Counsel for the defendant?

3 MR. AVROM: No, Judge.

4 THE COURT: Mr. Dominguez, are you satisfied with your
5 legal representation up to this point?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: What's the government's position on
8 restitution?

9 MR. BUCKLEY: Your Honor, as set forth in the
10 presentence investigation report, there are substantial losses
11 to the victims here that thus far I believe probation has
12 compiled I think it's close to \$2 million in losses. We would
13 request, as the statute permits, to have 90 days from the date
14 of imposition of sentence to try to finalize what those losses
15 are and identify the specific victims to which restitution must
16 be made and provide your Honor then with a proposed restitution
17 order, ideally on consent. We can work can it out with
18 Mr. Robin.

19 THE COURT: Okay. And defense counsel's position on
20 that?

21 MR. AVROM: That's fine, Judge. If we set roughly 90
22 days out would be August 3rd.

23 THE COURT: What's government's position on
24 forfeiture?

25 MR. BUCKLEY: As part of the defendant's plea agreement

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1 the defendant executed a proposed consent order of forfeiture.
2 So it involves forfeiture of, looks like four separate vehicles
3 which were identified in the order as the specific property, as
4 well as a money judgment in the amount of \$75,000 in U.S.
5 currency. So we would just ask that your Honor include
6 forfeiture in its oral pronouncement. And if your Honor has
7 not been provided with the original proposed consent order I
8 will make sure that we get it to you later today.

9 THE COURT: Okay. Anything from the defense on that?

10 MR. AVROM: I just note for your Honor's information
11 that none of the four cars actually belonged to the defendant,
12 I think they belonged to other co-defendants.

13 THE COURT: Okay. What's your position regarding
14 forfeiture?

15 MR. AVROM: We're in agreement with the consent order.

16 THE COURT: So I will order forfeiture in the amount
17 that -- you have the proposed order?

18 MR. BUCKLEY: This does not bear the original
19 signatures, but I will get your Honor one as soon as possible.

20 And the money judgment, your Honor, is set forth on
21 page 4 of the proposed consent order, and it's on paragraph
22 one.

23 THE COURT: So I will order, on consent, forfeiture in
24 the amount of a money judgment of \$75,000 of United States
25 currency. And the defendant has agreed not to contest any

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1 criminal, civil or administrative forfeiture of the specific
2 property or file a petition for remission or to assist a third
3 party in asserting a claim or file a petition for remission
4 relating to the specific property with the Department of
5 Justice.

6 I will impose the \$200 mandatory special assessments.
7 I will not impose a fine. I will impose, on Counts One and
8 Two, a term of three years of supervised release to run
9 concurrently with each other. I will impose the mandatory
10 conditions as set forth in page 4 of the presentence report. I
11 will impose the standard conditions of supervision one through
12 13, with the following special conditions:

13 That the defendant participate in a program approved
14 by the United States Probation Office, which program may
15 include testing to determine whether the defendant has reverted
16 to using drugs or alcohol. And I authorize the release of
17 available drug treatment evaluations and reports to substance
18 abuse treatment provider as approved by the probation officer.

19 The defendant will be required to contribute to cost
20 of services rendered in an amount determined by the probation
21 officer based on ability to pay or availability of the
22 third-party payment.

23 Also, that the defendant shall submit his person,
24 residence, place of business, vehicle, or any other premises
25 under his control to a search on the basis that the probation

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1 officer has reasonable belief that contraband or evidence of a
2 violation of the conditions of release may be found. The
3 search must be conducted at a reasonable time and in a
4 reasonable manner. Failure to submit to a search may be
5 grounds for revocation. The defendant shall inform any of the
6 residents that the premises may by subject to search pursuant
7 to this condition. The defendant shall report to nearest
8 probation office within 72 hours of release from custody. He
9 shall be supervised in the district of his residence.

10 I find that I have the authority to downwardly
11 department from the guidelines. I have the authority to vary
12 from the guidelines. I am not going to do so. I believe that
13 a sentence of 70 months is sufficient but not greater than
14 necessary to meet the ends of sentencing. I believe that is
15 sufficient to provide specific deterrence to Mr. Dominguez.
16 Again, those terms should run concurrently with each other.

17 So Mr. Dominguez, that is the sentence of the Court,
18 to be sentenced to a term of 70 months.

19 I know this is a difficult for you and your family. I
20 will recommend that Mr. Dominguez be accepted into the RDAP
21 program at the Bureau of Prisons. I will also recommend that
22 Mr. Dominguez, consistent with that recommendation, be
23 incarcerated in a facility as close to the New York City
24 metropolitan area as possible.

25 So Mr. Dominguez, I know it is difficult for you and

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1 your family. I hope that you can turn your life around. I
2 hope you can kick your addiction. I hope that you can make
3 choices in the future that you will be proud of and your family
4 will be proud of. I know that it can be difficult sometimes to
5 resist the temptation of easy money, but as you see, there
6 really is no such thing as easy money. So I hope that you take
7 advantage of the time that you are in custody. I wish you the
8 best of luck. I hope that I don't see you again for any
9 violation of supervised release.

10 And again, I would like to thank your family for their
11 letters of support and being here today.

12 Are there any open counts?

13 MR. BUCKLEY: Not as to this defendant, your Honor.

14 THE COURT: Mr. Dominguez, you have a statutory right
15 to appeal. You should talk to your lawyer about that. There
16 are time constraints on your ability to appeal. If you cannot
17 afford to hire a lawyer to help you prosecute the appeal, the
18 Court will give you a lawyer for free.

19 Is there anything else from the government today?

20 MR. BUCKLEY: No, your Honor. Just one question, the
21 proposed restitution order, is that going to be August 3rd?

22 THE COURT: Correct, that's August 3rd.

23 MR. BUCKLEY: Thank you, your Honor.

24 THE COURT: Anything else from the defense?

25 MR. AVROM: No, Judge, thank you.

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1 THE COURT: Okay.

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